A. G. Parrott Company *and* Laborer's District Council of Baltimore and Vicinity, Laborer's International Union of North America, AFL-CIO. Case 5-CA-9256

March 25, 1981

SUPPLEMENTAL DECISION AND ORDER AND DIRECTION OF SECOND ELECTION

On July 31, 1978, the National Labor Relations Board issued a Decision and Order in the above-captioned case,[1] finding that A. G. Parrott Company, herein called the Respondent, violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended, by refusing to bargain with Laborer's District Council of Baltimore and Vicinity, Laborer's International Union of North America, AFL-CIO, herein called the Union, following a consent election and the Union's certification as the collective-bargaining representative of the Respondent's employees. The Board overruled the Respondent's objections to the representation election and ordered the Respondent to bargain with the Union. Thereafter, the Respondent filed a petition for review of the Board's Decision and Order and the Board filed cross-application to enforce its Order with the United States Court of Appeals for the Fourth Circuit.

On August 4, 1980, a panel of the United States Court of Appeals for the Fourth Circuit issued its decision[2] denying enforcement of the Board's Order. The court of appeals held that the inadvertent disclosure by a Board agent of the nature of a signed ballot coupled with the Board's refusal to allow inspection of the ballot made it impossible to determine whether the Union had achieved a majority in the representation election and that the Respondent, therefore, had no duty to bargain with the Union. The court of appeals found that these circumstances warranted the holding of a second election. The Board has considered the matter and the decision of the Court of Appeals for the Fourth Circuit and accepts the court of appeals' findings and conclusions as the law of the case.

On August 12, 1977, a consent election was conducted by the National Labor Relations Board among Respondent's employees which resulted in 16 ballots cast for representation by the Union, 15 ballots cast against representation, and 1 void ballot. The void ballot was declared such by the Board agent who conducted the election because he noted that it had been signed.[3] However, the Board agent noted the voter's signature only after he had already started to place the ballot in the "no" pile. The Respondent's attorney acknowledged that he saw through the paper ballot and that it was a "no" vote and that there was writing on the ballot. The Board agent refused to show the ballot to the Respondent's observers and attorney at their request, since the voter's choice had been revealed, and declared the ballot to be void. The Regional Director affirmed the Board agent's action and thus determined that the Union received 16 votes for representation, while there were 15 valid votes against representation and 1 void ballot.

The Respondent filed timely objections to the conduct of the election, alleging that the Board agent improperly accepted as a valid "yes" vote a ballot marked with what appeared to be a "C" in the "yes" box, and improperly refused to show the signed "no" ballot to Respondent's observers at their request or, alternatively, improperly refused to count the signed "no" ballot since the voter's identity had not been revealed.

The Board examined the two questioned ballots *in camera* and agreed with the Regional Director that while the ballot marked "C" in the "yes" box should be considered valid, the signed "no" ballot should not be counted. The Board thus found that the Union had secured a majority of the valid ballots cast in the representation election and issued a Decision and Certification of Representative.[4]

The Respondent, however, continued to contest the certification of the Union and refused to bargain. On February 27, 1978, the Union filed a charge with the Regional Director alleging that the Respondent had engaged in and was engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the National Labor Relations Act, as amended. On April 7, 1978, the General Counsel filed a Motion for Summary Judgment directly with the Board. The Board granted the General Counsel's Motion for Summary Judgment and, as noted above, determined that the Respondent's refusal to recognize and bargain with the Union con-

[1] 237 NLRB 191.

[2] *N.L.R.B.* v. *A. G. Parrott Company*, 630 F.2d 212 (9th Cir. 1980).

[3] To protect the right of an employee to a free and uncoerced choice in representation elections, the Board and the courts have long and consistently applied the rule that a ballot which reveals the identity of the voter is void. *The Ebco Manufacturing Company*, 88 NLRB 983 (1950); *George K. Garrett Co., Inc.*, 120 NLRB 484, 485-486 (1958); *J. Brenner & Sons, Inc.*, 154 NLRB 656 (1965); *General Photo Products Division of Anken Industries*, 242 NLRB 1371 (1979); *Semi-Steel Casting Company of St. Louis* v. *N.L.R.B.*, 160 F.2d 388, 392 (8th Cir. 1947), cert. denied 332 U.S. 758; *N.L.R.B.* v. *National Truck Rental Co., Inc.*, 239 F.2d 422, 426 (2d Cir. 1956), cert. denied 352 U.S. 1016 (1957); *N.L.R.B.* v. *Ideal Laundry and Dry Cleaning Company*, 330 F.2d 712, 718 (10th Cir. 1964). But see *N.L.R.B.* v. *Wrape Forest Industries, Inc.*, 596 F.2d 817, 818 (10th Cir. 1979) (en banc) (rule invalidating signed ballot of "dubious validity" since name of voter need not be disclosed to either party) (dictum).

[4] Case 5-RC-10111 (February 3, 1978) (not printed in volumes of Board Decisions).

stituted violations of Section 8(a)(5) and (1) of the Act.[5]

The Court of Appeals for the Fourth Circuit denied enforcement. The court of appeals held that the Board had correctly counted the "C" ballot as a valid "yes" vote for the Union, but disagreed with the Board on the proper treatment of the signed "no" ballot. The court reasoned that the Respondent should not bear the onus of the Board agent's inadvertent disclosure of the nature of the signed ballot nor be required to accept the Board's statement that the ballot was in fact signed without being accorded a right to inspect for itself the challenged ballot.[6] The ballot, the court held, should not merely be declared void, since this would have the effect of giving a majority to the Union. The court of appeals also held that the signed "no" ballot should not be counted against representation, since this result would deprive the Union of a majority and would constitute an injustice to the Union, which also had no opportunity to verify the signature. The challenged and potentially decisive ballot was thus placed in limbo and it became impossible to determine the outcome of the representation election. The court of appeals concluded that "the circumstances imperatively warrant the holding of another election, to permit a determination free of error, in which all ballots can properly be determined to be valid or invalid, and a proper decision be made as to outcome."[7]

Accordingly, the Board orders a second election in the following unit, already found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees of A. G. Parrott Company, including laborers, form setters, grade checkers, equipment operators, finishers, and leadmen, but excluding office clerical employees, mechanics, truckdrivers, guards and supervisors as defined in the Act.

Based upon all of the foregoing, the Board issues the following:

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint against the Respondent, A. G. Parrott Company, Elkridge, Maryland, be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the Decisions of the National Labor Relations Board in Case 5-RC-10111 (February 3, 1978) and Case 5-CA-9256 (July 31, 1978) should be, and they hereby are, vacated.

IT IS FURTHER ORDERED that the election held on August 12, 1977, in Case 5-RC-10111 be, and it hereby is, set aside, and that said case is hereby remanded to the Regional Director for Region 5 for the purpose of scheduling and conducting another election at such a time that he deems circumstances will permit the free choice of a bargaining representative.[8]

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

[5] 237 NLRB 191 (1978).

[6] *Burlington Mills Corporation*, 56 NLRB 365, 367-368 (1944).

[7] *N.L.R.B.* v. *A. G. Parrott Company, supra*, 630 F.2d at 215.

[8] The election will not be conducted should the Union, within 10 days of the issuance of this Supplemental Decision and Order and Direction of Second Election, notify the Regional Director for Region 5 that it wishes to formally withdraw its petition for a representation election.